

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

State of New York, *et al.*,

Petitioners,

v.

Andrew Wheeler, as Administrator of the
Environmental Protection Agency, *et al.*,

Respondents.

Case No. 20-1022
(consolidated with
Case No. 19-1260)

State of Delaware,

Petitioner,

v.

Andrew Wheeler, as Administrator of the
Environmental Protection Agency, *et al.*,

Respondents.

Case No. 20-1034
(consolidated with
Case No. 19-1260)

Harris County, Texas,

Petitioner,

v.

Andrew Wheeler, as Administrator of the
Environmental Protection Agency, *et al.*,

Respondents.

Case No. 20-1040
(consolidated with
Case No. 19-1260)

NON-BINDING STATEMENT OF ISSUES

Petitioners State of New York, District of Columbia, State of Delaware,
State of Illinois, State of Maine, State of Maryland, Commonwealth of

Massachusetts, People of the State of Michigan, State of Minnesota, State of New Jersey, State of New Mexico, State of Oregon, Commonwealth of Pennsylvania, State of Rhode Island, State of Vermont, the State of Wisconsin, the City of Philadelphia, and Harris County (collectively, the “State and Municipal Petitioners”), pursuant to the Court’s Order of January 30, 2020, hereby submit their non-binding statement of issues to be raised regarding their challenge to the Environmental Protection Agency’s (“EPA”) final agency action entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 84 Fed. Reg. 69,834 (Dec. 19, 2019) (the “Rollback Rule”).

In the Rollback Rule, EPA rescinded critical aspects of a prior rule that EPA finalized in 2017, entitled *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 82 Fed. Reg. 4,594 (Jan. 13, 2017). Without waiving any rights to submit additional issues, as set forth below, State and Municipal Petitioners intend to raise the following issues in support of their challenge to the Rollback Rule pursuant to section 307(d)(9) of the Clean Air Act, 42 U.S.C. § 7607(d)(9):

Accident Prevention Requirements

1. Whether EPA acted arbitrarily, capriciously, or not in accordance with law in rescinding enhanced safeguards to protect workers and communities from dangerous chemical accidents in contravention of section 112(r)(7)(B)(i) of the

Clean Air Act, 42 U.S.C. § 7412(r)(7)(B)(i), which mandates that EPA regulations prevent and minimize risks from chemical accidents to the greatest extent practicable.

2. Whether EPA acted arbitrarily, capriciously, or not in accordance with law in rescinding enhanced safeguards to protect workers and communities from dangerous chemical accidents where the rulemaking record does not support EPA's rescission of these safeguards.

3. Whether EPA promulgated the Rollback Rule without observance of procedure required by law when EPA failed to consider rulemaking comments submitted after the close of the comment period, which raised several issues concerning the proposed rescission of enhanced safeguards to protect workers and communities from dangerous chemical accidents that are of central relevance to the outcome of the rulemaking, and the Rollback Rule would have been significantly different if EPA had not made such error.

Emergency Response Coordination Requirements

4. Whether EPA acted arbitrarily, capriciously, or not in accordance with law in rescinding emergency response coordination requirements in contravention of section 112(r)(7)(B)(i) of the Clean Air Act, 42 U.S.C. § 7412(r)(7)(B)(i), which mandates that EPA regulations prevent and minimize risks from chemical accidents to the greatest extent practicable.

5. Whether EPA acted arbitrarily, capriciously, or not in accordance with law in rescinding emergency response coordination requirements where the rulemaking record does not support EPA's rescission of this requirement.

Compliance Deadlines

6. Whether EPA acted arbitrarily, capriciously, or not in accordance with law in removing the compliance deadline for field exercises in contravention of section 112(r)(7)(B)(i) of the Clean Air Act, 42 U.S.C. § 7412(r)(7)(B)(i), which mandates that EPA regulations be applicable to a stationary source three years after the date of promulgation.

7. Whether EPA acted arbitrarily, capriciously, or not in accordance with law in removing the compliance deadline for field exercises where the rulemaking record does not support EPA's rescission of this deadline.

March 19, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Non-Binding Statement of Issues was filed on March 19, 2020 using the Court's CM/ECF system and, therefore, service was accomplished upon counsel of record by the Court's system.

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